

DeGeorge  
144247



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** Coltec Industries, Inc.

**File:** B-243064

**Date:** June 25, 1991

Thomas J. Reder for the protester.  
Clas-Eirik Strand and Torsten Astrom, for Wartsila Diesel, Inc., an interested party.  
David M. Lowry, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.  
Steven W. DeGeorge, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest is dismissed where original allegation is effectively withdrawn by protester in its comments on agency's report and subsequent allegation fails to state a valid basis for protest.

### DECISION

Coltec Industries Inc. protests the award of a contract to Wartsila Diesel, Inc. for diesel generator sets under request for proposals (RFP) No. N62742-90-R-0520, issued by the Department of the Navy, Naval Facilities Engineering Command. Coltec has raised two objections to the award. First, the protester has complained that the generator sets proposed by Wartsila are ineligible for award because they are allegedly manufactured in Finland, a nonqualifying country under the Department of Defense Balance of Payments Program. Second, the protester has expressed concern over the fact that Wartsila is a Finnish company, alleging that Finland is a country "long dominated by the Soviet Union." According to Coltec, this situation raises concern as to the supportability of the equipment.

For the reasons discussed, we dismiss the protest.

The solicitation, issued on October 4, 1990, sought proposals for the purchase of diesel generator sets to be installed at Subic Bay, Republic of the Philippines. The RFP incorporated by reference the Buy American Act and Balance of Payments Program clause which appears at Department of Defense Acquisition Regulation Supplement (DFARS) § 232.225-7001. In

pertinent part, this clause provides for the imposition of an evaluation differential on certain foreign products. However, in the case of procurements subject to the Balance of Payments Program, the clause further provides that the differential will not be applied to offers of foreign products from a "qualifying country." Because the instant procurement is for the acquisition of products for use outside the United States, it was considered subject to the Balance of Payments Program. DFARS § 225.300.

Five proposals were received by the November 9 closing date. Following negotiations, best and final offers (BAFO) were submitted on February 11, 1991. On February 27, Coltec filed this protest contending that any award to Wartsila would be improper under the Balance of Payments Program because the generator sets proposed by that firm are allegedly manufactured in Finland, a nonqualifying country. Both the agency and Wartsila responded to the protest maintaining that the generator sets are actually manufactured in the Netherlands which is a qualifying country. Thereafter, in its comments on the agency's report, the protester conceded the place of manufacture of the equipment as the Netherlands. However, the protester expressed continued concern over the award on the basis that Wartsila is a Finnish company, and Finland, according to the protester, has been long dominated by the Soviet Union.

We view the protester's comments on the agency's report, expressing agreement regarding the place of manufacture of the Wartsila generator sets, as constituting, in effect, a withdrawal of its original ground for protest. By acknowledging that the products are manufactured in Finland, a qualifying country, the protester has eliminated that as an issue in dispute between the parties. Furthermore, the protester's concern about Wartsila being a Finnish company fails to constitute a valid basis for protest. Our Bid Protest Regulations require that protesters provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. 4 C.F.R. § 21.1(c)(4) and (e) (1991); Robert Wall Edge--Recon., 68 Comp. Gen. 352 (1989), 89-1 CPD ¶ 335. Coltec's expression of concern and allegation about the Soviet Union's dominance over Finland falls far short of this requirement.

The protest is dismissed.



John Brosnan  
Assistant General Counsel